(b)(3):10 USC 424

DEPARTMENT OF DEFENSE INTELLIGENCE INFORMATION REPORT

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16. SUMMARY: ~~(C)~~ This report forwards an AMEMBASSY Buenos Aires cable cite 8796, which provides a summary of Judicial improvements and activities currently in progress in Argentina.

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21. This IR contains 1 pages.

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TELEGRAM

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FROM: AMEMBASSY BUENOS AIRES

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SUBJECT: JUDICIAL IMPROVEMENTS AND ACTIVITIES - A ROUNDUP

ACTION: SECSTATE WASHDC

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Date: Oct 19, 2018

~~LIMITED OFFICIAL USE~~ BUENOS AIRES 8796

1. Judicial Funding Plan-----

The Justice Ministry recently announced the creation of a special fund for implementing judicial improvements. Under the terms of Public Law 21,859 which went into effect on October 1, 1978, a new scale of judicial fees has been established which are to be put into a special "judicial infrastructure account." These funds, which are estimated by a Ministry of Justice spokesman to amount to about 300 million pesos a month (at present exchange rates over $330,000), will be used to construct and repair existing buildings and purchase needed office equipment to modernize court facilities.

2. According to the Ministry's spokesman, the fund's first major project will be the establishment of 15 new

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DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

civil courts and 10 new commercial courts to ease the case load burden on the present legal system. The fund will be used to borrow money for the construction of a national legal center which is to be built over the next seven or eight years in Buenos Aires at a cost of $180 million. The fund was described as a concrete step in bringing about a rapid and efficient system of justice in Argentina.

3. Human rights organizations and lawyers have expressed concern to the Embassy that the law's new judicial fee structure will make habeas corpus and amparo petitions expensive. The existing judicial tariffs are being increased by 50 percent and a new fee is being introduced of about $35 for the filing of a writ of habeas corpus or amparo, if the reply is negative. These are now free. A Permanent Assembly leader claimed that over 50,000 habeas corpus petitions for disappeared persons have been filed since March, 1976. (Note: Habeas corpus petitions are often repeated, so this number cannot be directly related to total disappearances.) A former judicial official informed the Embassy that over 11,000 habeas corpus petitions were filed in the federal capital of Buenos Aires alone in 1977. Heretofore, most habeas corpus proceedings have had negative results as the military

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Authority: EO 13526
DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

In the latter long analytical piece, fulsome praise was directed at the Supreme Court's for reaffirming the principle that the Executive can only suspend those rights during a state of siege which can be shown to aggravate the emergency situation. The article presented a detailed discussion of the case. The only fact it omitted was the name of the plaintiff in the case -- Jacobo Timerman.

13. Disappearance Cases Continue to be Turned Down-----

Although the Supreme and Criminal Appeals Courts have moved in PEN detainee cases, the courts still refuse to accept jurisdiction over any disappearance cases, except pro forma habeas corpus petitions. On July 28, the Supreme Court declared itself incompetent to hear the case brought by the Socialist Workers Party (PST) claiming that over a hundred members of the formerly functioning political party had been abducted by government agents since March, 1976. The PST's lawyer responded on August 7 stating that it is impossible that such a fundamental human right is not protected under the Argentine Constitution due to a procedural problem. The PST brief argues if the law does not have a specific procedural remedy, but a clear injustice is demonstrated, then the judicial power must find a legal recourse to protect the

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Authority: EO 13526
DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

the lower court for not performing its duties as prescribed by the constitution.

10. At the same time, the Criminal Appeals Court in another decision issued an order releasing four women detained by the Executive (PEN). The court stated that under Article 23 of the Federal Constitution the Executive Branch, through its prosecutors, had submitted reports so full of inconsistencies that it failed to carry its burden of proof. The women ordered to be released were Hortencia Romano, Paulaina Macuulia, Beatriz Zulema Grasso and Irene Zecca.

11. This new line of decisions has brought out support from the Bar and the press. On November first, the Lawyer's Association issued a public statement, which was given wide press play, pointing out "the importance of and institutional significance" the recent habeas corpus decisions, and the fact that the decisions demonstrated the independence of the judiciary.

12. Favorable editorial comment on these decisions was run by the Buenos Aires Herald as part of a major editorial theme on the rule of law. But perhaps, of more significance, was the running of an op-ed story in the Army controlled La Opinion and op-ed pieces in the La Prensa on "Reorganization of the Judiciary" and "The Supreme Court Defends Fundamental Rights".

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Authority: EO 13526
DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

services' and police routinely report that they have no information on the person being sought.

4. Judicial Reform Conferences-----

On October 12 over three hundred outstanding lawyers, prosecutors and members of the federal and provincial judiciary met in Mar del Plata for discussion of judicial reform. Dr. Mark Cannon, U.S. Supreme Court Administrator, and Dr. Joseph Ebersole, Executive Director of Federal Judicial Center in Washington, were highlighted as key conference personalities. Ambassador Castro, lawyer, former prosecutor and judge, also participated in conference.

5. Results from conference were all positive. It was the first time that the President of Supreme Court had met with federal and provincial judges from throughout the country. The conference established an important precedent. Supreme Court Justice Garbrielli informed the Ambassador that annual conferences would be held in the future with all Argentine judges.

6. One of key topics focussed on at the conference was the independence of the courts from the Executive. There was complete concurrence on the need for better training and selection of judges, which included better pay-scale and more dignified working conditions.

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Authority: EO 13526
DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

More effective and proper use of habeas corpus and ley de amparo proceedings were also discussed.

7. As a result of the conference the two main Bar Associations in Buenos Aires plan to hold seminars on Judicial Reform, Judicial Independence and Better Selection and Training of Judges. The local Bar of Comparative Law will soon hold a seminar on comparative law between the United States and Argentina. Law professors from Harvard, Duke and Arizona State will be participating. The Ambassador has been invited to all these seminars.

8. Judicial Review of State of Siege Cases-----

Several more cases have followed the recent precedents set by the Supreme Court in the Timerman appeal (See Buenos Aires 5646) and the Criminal Appeals Court in the habeas corpus case involving 14 women PEN prisoners (See Buenos Aires 8212) in challenging the reasonableness of the state of siege detentions.

9. On October 23 the Federal Criminal Appeals Court reversed a lower court's dismissal of 157 petitions for writs of habeas corpus. The Appellate Court went on to rebuke the lower court for its handling of habeas corpus' cases and insisted on more thorough investigations of these cases. It even castigated

fundamental rights at stake. In another case, Federal District Court judges have refused to accept jurisdiction in a case charging the Executive with the wrongful detention of a young woman. The charges are supported by a sworn statement of a jail guard that the girl was held for over a month at a suburban police station outside of Buenos Aires.

14. Despite these recent cases, a coalition of HRO's consisting of the Permanent Assembly for Human Rights (PAHR), the League for the Rights of Man (LIGA), and the Ecumenical Movement for Human Rights (MEDH) has been preparing an extraordinary habeas corpus petition for the Supreme Court. The petition asks the court to undertake investigations of the large number of persons reported missing in Argentina under circumstances which indicate government involvement. Although the new petition's legal argumentation is expected to track that previously presented to and rejected by the high court, the new petition will be much larger in scope. It will be submitted by over 1200 families of disappeared persons. The submission is reported to be more political in tone and announcements regarding the petition will be given to the media in Argentina and abroad in an effort to force the

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Authority: EO 13526
DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

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Supreme Court to involve itself in the disappearance question.

15. A coalition lawyer learned by chance that the Supreme Court suppressed the Executive's formal reply to the Supreme Court's 1977 inquiry on the disappearance cases raised in the first Smith petition. The Executive's reply is reported to have flatly rejected the court's request for information on a blunt separation of powers theory which stated that the court only thinks, but the Executive acts.

16. Habeas Corpus Filings-----

According to a Buenos Aires attorney who continues to accept disappearance and detainee cases, the number of habeas corpus petitions being filed with the judiciary has fallen dramatically in the last few months. The attorney noted that in February and March 1978 over 20 habeas corpuses were filed daily in the Buenos Aires courts. The daily average now is around six or seven. Over 11,000 habeas corpus petitions were reportedly filed in the federal capital alone during 1977 regarding disappearance cases. (Note: It should be remembered that families and friends may file repeat habeas corpus petitions regarding a single disappearance case.)

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Authority: EO 13526
DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

17. The Supreme Court of the Province of Buenos Aires issued a resolution on June 13, 1978 recommending that all the provincial courts not submit habeas corpus petitions to the Military Joint Staff (Estado Mayor Conjunto).

18. Military Court Undertaking Subversion Cases-----

Several of the Revolutionary Communist Party (PCR) members who were arrested during this Spring's San Justo operations have been brought before military tribunals. According to PCR contacts and family members, charges are being brought against these persons for possession of weapons based on confessions obtained during their hostile interrogation while the PCR members were held clandestinely in the Tablada Military Barracks. Reportedly, one PCR member refused to sign his confession claiming that he never owned a gun, he was told that as he had carried a gun in the Army and it was proper to include the fact in his confession. He reportedly signed under duress.

19. Court Actions Against Terrorists and Subversives-----

The local press has reported in the last several months a number of court decisions against Montonero and ERP militants, especially within the jurisdiction of the Army Second Corps (Rosario Area). Forty-one ERP and Montonero members have been convicted and given

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Authority: EO 13526
DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

stiff sentences up to life imprisonment by the courts there. In one case four ERP members were given life sentences for killing an Army Major on November 7, 1974. (This is the first "judicial" action we can remember against terrorists accused of causing physical injury to military personnel.)

20. Judicial proceedings in other Corps areas have not been as numerous. In the Third Corps area (Cordoba), judicial sentences against ~~xxxxxxx~~ two persons -- one a former Tupamaro -- were announced and seven persons affiliated with the Montoneros were reported arrested. In Fifth Corps area (Bahia Blanca), five subversives received half of the normal sentences as they turned themselves in. In the First Corps area (Buenos Aires), three judicial decisions were reported against subversives. In an unusual case the Criminal Appeals Court ordered the investigation of the reported torture of a business-man by members of the Buenos Aires Provincial Police.

21. COMMENT: It would be naive to anticipate broad scale judicial reforms in Argentina. On the other hand, progress is being made, even though it is slow and uneven. The growing awareness in the legal profession and in other sectors of Argentine society of the need for judicial reform and the necessity

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DIA FOIA & Declassification Services Offices
Date: Oct 19, 2018

of reestablishing of rules of the game as part of the "National Reorganization Process" is an encouraging factor. We note this attitude not only in liberal and intellectual circles but among traditional and conservative groups as well. These latter groups are just beginning to express concern about the state of the law. While these conservatives approve the extraordinary steps taken by the military to restore public order, we are now hearing more of their voices raised over the lack of respect for the law and the legal traditions of the nation. After the perceived emergency is over, revolutionary style justice becomes seen as a threat to conservative groups. They are now beginning to consider the basic question of who polices the policeman. END COMMENT.

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